

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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JARED EVERLY,

Plaintiff,

v.

STATE OF NEVADA, et al.,

Defendants.

Case No. 2:23-cv-00562-RFB-BNW

ORDER

Plaintiff Jared Everly brings this civil-rights action under 42 U.S.C. § 1983 to redress constitutional violations that he claims he suffered while incarcerated at Southern Desert Correctional Center. (ECF No. 1-1). On April 20, 2023, this Court ordered Everly to file a fully complete application to proceed in forma pauperis or pay the full \$402 filing fee on or before June 20, 2023. (ECF No. 4). The Court warned Everly that the action could be dismissed if he failed to file a fully complete application to proceed in forma pauperis with all three documents or pay the full \$402 filing fee for a civil action by that deadline. (Id. at 2). That deadline expired and Everly did not file a fully complete application to proceed in forma pauperis, pay the full \$402 filing fee, or otherwise respond.

I. DISCUSSION

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. Thompson v. Hous. Auth. of City of Los Angeles, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party’s failure to obey a court order or comply with local rules. See Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring pro se plaintiffs to keep court apprised of address); Malone v. U.S. Postal Service, 833 F.2d 128, 130 (9th

1 Cir. 1987) (dismissal for failure to comply with court order). In determining whether to
2 dismiss an action on one of these grounds, the Court must consider: (1) the public's
3 interest in expeditious resolution of litigation; (2) the Court's need to manage its docket;
4 (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of
5 cases on their merits; and (5) the availability of less drastic alternatives. See In re
6 Phenylpropanolamine Prod. Liab. Litig., 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting
7 Malone, 833 F.2d at 130).

8 The first two factors, the public's interest in expeditiously resolving this litigation
9 and the Court's interest in managing its docket, weigh in favor of dismissal of Everly's
10 claims. The third factor, risk of prejudice to defendants, also weighs in favor of dismissal
11 because a presumption of injury arises from the occurrence of unreasonable delay in filing
12 a pleading ordered by the court or prosecuting an action. See Anderson v. Air West, 542
13 F.2d 522, 524 (9th Cir. 1976). The fourth factor—the public policy favoring disposition of
14 cases on their merits—is greatly outweighed by the factors favoring dismissal.

15 The fifth factor requires the Court to consider whether less drastic alternatives can
16 be used to correct the party's failure that brought about the Court's need to consider
17 dismissal. See Yourish v. Cal. Amplifier, 191 F.3d 983, 992 (9th Cir. 1999) (explaining
18 that considering less drastic alternatives before the party has disobeyed a court order
19 does not satisfy this factor); accord Pagtalunan v. Galaza, 291 F.3d 639, 643 & n.4 (9th
20 Cir. 2002). Courts "need not exhaust every sanction short of dismissal before finally
21 dismissing a case, but must explore possible and meaningful alternatives." Henderson v.
22 Duncan, 779 F.2d 1421, 1424 (9th Cir. 1986). Because this Court cannot operate without
23 collecting reasonable fees, and litigation cannot progress without a plaintiff's compliance
24 with court orders, the only alternative is to enter a second order setting another deadline.
25 But issuing a second order will only delay the inevitable and further squander the Court's
26 finite resources because its first order was ignored. Setting another deadline is not a
27 meaningful alternative given these circumstances. So the fifth factor favors dismissal.
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1 After thoroughly considering these dismissal factors, the Court finds that they
2 weigh in favor of dismissal.

3 **II. CONCLUSION**

4 **IT IS THEREFORE ORDERED** that this action is dismissed without prejudice
5 based on Plaintiff's failure to file a fully complete application to proceed in forma pauperis
6 or pay the full \$402 filing fee in compliance with this Court's April 20, 2023 Order. The
7 Clerk of Court is directed to enter judgment accordingly and close this case. No other
8 documents may be filed in this now-closed case. If Jared Everly wishes to pursue his
9 claims, he must file a complaint in a new case and either pay the required filing fee or
10 properly apply for in forma pauperis status.

11 **IT IS FURTHER ORDERED** that the application to proceed in forma pauperis (ECF
12 No. 3) is DENIED.

13 **IT IS FURTHER ORDERED** that Plaintiff may move to reopen this case and vacate
14 the judgment by filing a motion for reconsideration of this order. In this motion, the Plaintiff
15 is required to explain what circumstances delayed him from paying the filing fee or filing
16 the application to proceed in forma pauperis and a complaint in compliance with LSR 2-
17 1. If the Court finds there to be good cause or a reasonable explanation therein, the Court
18 will reopen the case and vacate the judgment.

19 DATED: June 30, 2023

A handwritten signature in black ink, appearing to be 'RFB', is written above a horizontal line.

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22 RICHARD F. BOULWARE, II
UNITED STATES DISTRICT JUDGE
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